

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0688**

Marcia Swanson,
Respondent,

vs.

Denise Wolf,
Appellant.

**Filed January 30, 2023
Reversed and remanded
Jesson, Judge**

Faribault County District Court
File No. 22-CV-21-642

Daniel J. Bellig, Joseph A. Gangi, Farrish Johnson Law Office, CHTD, Mankato, Minnesota; and

Paul C. Edman, Michael Edman, Edman & Edman, Fairmont, Minnesota (for respondent)

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Considered and decided by Johnson, Presiding Judge; Connolly, Judge; and
Jesson, Judge.

SYLLABUS

Minnesota Statutes section 501C.0204 (2022) dictates that a district court cannot remove a trustee in an in rem proceeding. Rather, the district court must act in an in personam proceeding to remove a trustee.

OPINION

JESSON, Judge

This case turns on the power of a district court to issue orders in a trust proceeding that bind a person. Respondent Marcia Swanson petitioned the district court to remove her sister, appellant Denise Wolf, as trustee of a trust established by their father. The district court ruled that, in this trust proceeding, Swanson had invoked the court's authority to act in rem—the power of the district court to issue an order binding trust property—and that it could remove Wolf under its in rem power. But per the Minnesota Trust Code, a district court must act in personam—in a manner involving the district court's power to issue an order that binds a person—to remove a trustee. Because Swanson never properly invoked the district court's in personam jurisdiction, we reverse and remand.

FACTS

Wolf and her sister, Swanson, are co-beneficiaries of a trust established by their father, Myron Childs. Wolf serves as the trustee. On November 3, 2021, Swanson petitioned the district court for a trust accounting, court supervision of the trust, removal of Wolf as trustee, and appointment of herself as successor trustee. The next day, Swanson amended the petition to clarify the date she last received a distribution from the trust. Both the original and the amended petitions stated: "This Court has jurisdiction of this matter," but did not specify whether Swanson's petition was asking the district court to act in rem, in personam, or both. Swanson mailed the petition to Wolf and published notice in the local newspaper.

In December 2021, Wolf filed an objection to Swanson’s petition and moved to dismiss it, arguing that the district court lacked jurisdiction to remove her. Wolf admitted that the district court had in rem jurisdiction over the trust and did not contest that the district court could rule on Swanson’s petition for trust accounting, court supervision of the trust, and appointing Swanson as trustee with in rem jurisdiction. But Wolf alleged that because the district court lacked in personam jurisdiction over her, it did not have the authority to remove her as trustee.

The next month, Swanson filed a second amended petition, stating: “Petitioner invokes the jurisdiction of the Court as an in personam proceeding.” Swanson served Wolf with the second amended petition, but not an order for hearing on that petition. After the district court held a review hearing and heard arguments on the jurisdiction issue, it denied Wolf’s motion to dismiss, holding that, although the district court did not have in personam jurisdiction, in rem jurisdiction was adequate to give it jurisdiction to remove Wolf.

Wolf appeals.

ISSUE

Does a district court have the jurisdiction to remove a trustee when it only has in rem, not in personam, jurisdiction?

ANALYSIS

The concept of personal jurisdiction refers to “the court’s power to exercise control over the parties.” *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979). Personal jurisdiction has two elements: (1) an adequate connection between the defendant and the state, which forms the basis for the exercise of personal jurisdiction by the district court,

and (2) the plaintiff's invocation of the personal jurisdiction of the district court by a process that satisfies both the requirements of due process and the relevant Minnesota Rules of Civil Procedure governing the commencement of civil actions and the personal service of process. *Wick v. Wick*, 670 N.W.2d 599, 603 (Minn. App. 2003).

In a trust matter, the district court may exercise in rem jurisdiction, in personam jurisdiction, or both, depending on which form of jurisdiction the petitioner invokes. Minn. Stat. § 501C.0201(c) (2022). While a judgment in rem affects the interests of all persons in designated property, a judgment in personam imposes a personal liability or obligation on one person in favor of another. *Nagel v. Westen*, 865 N.W.2d 325, 330 (Minn. App. 2015), *rev. denied* (Minn. Sept. 15, 2015). The issue here is whether a district court with in rem jurisdiction over trust property has the jurisdiction to remove a trustee when the person seeking the removal has not formally invoked the district court's in personam jurisdiction. Because this dispute raises a question of statutory interpretation, we review the district court's decision de novo. *City of Oronoco v. Fitzpatrick Real Est., LLC*, 883 N.W.2d 592, 595 (Minn. 2016).

With the elements of jurisdiction in mind, we turn to Swanson's petition to remove Wolf as trustee. First, we determine whether a district court acting only with in rem jurisdiction can remove a trustee, then we address the specific facts of this case.

I. A district court acting only in rem lacks the jurisdiction to remove a trustee.

Judicial proceedings involving trusts may span a host of topics: whether to confirm an action taken by a trustee, approve payment of fees charged against the trust, terminate a trust, subject a trust to accounting supervision by the court, and to appoint—or remove—a

trustee, among others. Minn. Stat. § 501C.0202 (2022). In fact, Minnesota Statutes section 501C.0202 lists 24 separate trust subjects which may involve judicial resolution. *Id.*

None of those 24 subjects, however, specify—when an interested person¹ petitions a district court to address those topics—which type or types of jurisdiction must be invoked. *Id.* The preceding statutory provision instructs the party petitioning for judicial relief in a trust proceeding intervention to state whether the interested person is asking the district court to act in rem or in personam, or both. Minn. Stat. § 501C.0201(c). But if the party fails to specify the type of jurisdiction, the statute provides a default: in rem jurisdiction. *Id.*, (c)(1).

Here, Swanson’s initial and first amended petitions failed to specify which type of jurisdiction she invoked.² As a result, in rem jurisdiction applies. Wolf does not contest that in rem jurisdiction is sufficient for three of Wolf’s four requests, but alleges that to remove a trustee, in personam jurisdiction must be invoked.

This dispute raises a question of statutory interpretation. “The first step in statutory interpretation is to determine whether the statute is ambiguous on its face.” *In re Dakota County*, 866 N.W.2d 905, 909 (Minn. 2015). A statute is ambiguous when its language is subject to more than one reasonable interpretation. *Id.* If a statute is unambiguous, we apply the plain meaning. *Id.* Here, the statute setting forth the trust subjects does not

¹ Minnesota Statutes section 501C.0201(b) (2022), defines an interested person as, among other things, a beneficiary of a trust. Because Swanson is a beneficiary of the trust, she is an interested person under the statute.

² As explained below, Swanson did not properly serve her second amended petition, so its attempted invocation of in personam jurisdiction was unsuccessful.

specify the necessary jurisdiction. *See* Minn. Stat. § 501C.0202. And every law shall be construed, if possible, to give effect to all its provisions. Minn. Stat. § 645.16 (2022). Therefore, to address whether a district court must have in personam jurisdiction to remove a trustee, we look to the surrounding statutory provisions.

Section 501C.0203 (2022) of the Minnesota trust statute lays out the procedure that parties follow for initiating in rem and in personam proceedings. In rem judicial proceedings begin when an interested person files a petition and gives notice by publishing a copy of the order for hearing in a legal newspaper and mailing a copy of the order for hearing to current trustees and qualified beneficiaries. *Id.*, subd. 1. In contrast, an interested person brings an in personam judicial proceeding by serving a copy of the order for hearing and petition to current trustees and qualified beneficiaries at least 15 days before the hearing. *Id.*, subd. 2. These two pathways for initiating in rem and in personam proceedings, contained in two separate subdivisions, show how in rem and in personam proceedings are distinct.

Minnesota law also limits the power of a district court to bind parties and property in trust matters, depending on the type of jurisdiction involved.³ An order from an in rem proceeding “is binding in rem upon the trust estate and upon the interests of all beneficiaries [of the trust right], vested or contingent, even though unascertained or not in being.” Minn. Stat. § 501C.0204, subd. 1. An order from an in personam proceeding “is binding on (1) a

³ Minnesota Statutes section 501C.0706(b)(1)-(4) (2022), grants the district court the power to remove a trustee on its own initiative for four reasons. Because Swanson has not alleged any of these four grounds for removal apply, this portion of the statute does not impact our statutory analysis.

party who is served with notice of the judicial proceeding, (2) a party who appears in the judicial proceeding, and (3) any other party who may be bound by such parties as described in [other sections].” *Id.*, subd. 2. Accordingly, based on the statutory language, an in rem proceeding cannot bind a trustee, only trust property.

Because in rem jurisdiction is over the trust estate and in personam jurisdiction is over the person, we discern that to issue an order granting a petition to remove a trustee, the district court must exercise in personam jurisdiction.⁴

Still, Swanson asserts that in rem jurisdiction is sufficient to remove a trustee. First, Swanson refers us to Minnesota Statutes section 501C.0208 (2022), which states, “Sections 501C.0201 to 501C.0207 do not limit or abridge the power or jurisdiction of the court over trusts, trustees, and beneficiaries.” And she cites a 1957 Minnesota Supreme Court case that classifies predecessors to sections 501C.0201 to 501C.0207 of the trust statute as “purely procedural” and qualified by Minnesota Statutes section 501C.0208. *In re Bush’s Tr.*, 81 N.W.2d 615, 624 (Minn. 1957). But, as explained below, Swanson did not follow the proper procedure to invoke in personam jurisdiction, and the court’s power over a trustee is premised on it having jurisdiction in the first place. Thus neither *Bush* nor section 501C.0208 instruct this court on whether in rem jurisdiction allows it to remove a trustee.

⁴ Swanson contends that because Wolf appeared to defend against the petition to remove her, the district court has jurisdiction to remove Wolf, even under an in rem proceeding. But because this argument was raised for the first time at oral argument before this court, we decline to reach it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those questions previously presented to and considered by the district court).

Nor are we persuaded that the provision of the trust statute that states “a trustee may be removed by the court on its own initiative” contradicts our interpretation of the jurisdiction necessary for trustee removal. Minn. Stat. § 501C.0706(a) (2022). Swanson argues that this statutory provision suggests that the power of the district court is broad enough to issue an order to remove a trustee under in rem jurisdiction. But although a court can remove a trustee on its own initiative, as opposed to upon the motion of an interested person, for example, it would still need jurisdiction over the trustee to be able to issue an order binding on the trustee being removed. Orders filed in in rem proceedings, however, do not do so. As a result, the statutory provisions cited by Swanson do not change our conclusion that a district court acting in rem cannot remove a trustee.⁵

Thus the plain language of the Minnesota trust statute, read as a whole, clearly indicates that in rem and in personam jurisdiction are two distinct ways for a district court to exercise jurisdiction over a trust matter. And because orders from a district court can only bind a party if the district court has in personam jurisdiction, the language of the statute unambiguously indicates that a district court must have in personam jurisdiction to remove a trustee. Minn. Stat. § 501C.0204, subd. 2.

⁵ Finally, Swanson argues that Wolf waived any personal-jurisdiction issue by filing two petitions requesting instructions from the court. But because Swanson did not raise this argument before the district court, Swanson herself waived this argument. *See Thiele*, 425 N.W.2d at 582. Wolf’s two petitions were filed on December 21, 2021, and February 14, 2022. Swanson filed her second amended petition in January 2022, a response to Wolf’s motion to dismiss in February 2022, and an objection to Wolf’s petition in May 2022. None of these documents mention Wolf waiving personal jurisdiction. Accordingly, Swanson has failed to properly raise this argument before this court.

To hold otherwise would collapse the distinction between the two types of proceedings. When interpreting a statute, no word, phrase, or sentence should be deemed superfluous, void, or insignificant, whenever possible. *Minn. Voters All. v. County of Ramsey*, 971 N.W.2d 269, 278 (Minn. 2022) (quotation omitted). And if an order filed in an in rem trust proceeding granting a removal petition could bind a trustee, the portion of Minnesota Statutes section 501C.0204, subdivision 2, specifying that an order from an in personam proceeding can bind a trustee would be superfluous.

While the plain language of these trust statutes dictates our conclusion, we observe that the legislative history behind the in rem and in personam dichotomy also supports our interpretation. Before 2015, only in rem jurisdiction existed in trust proceedings in Minnesota. S.F. 578, 2015 Reg. Sess., art. 1 (repealing Minnesota Statutes section 501B.21 (2014), which stated that a district court’s order in a trust matter is “binding in rem upon the trust estate and upon the interests of all beneficiaries” and includes no mention of in personam jurisdiction). The Minnesota State Bar Association created a special committee to study the adoption of the Uniform Trust Code in 2010, and in 2015, it presented a bill to the Minnesota Legislature to do so. The chair of the bar association’s committee testified before both the Minnesota House and Senate about the bill, explaining that it established a dual track for trust litigation, and parties could choose at the outset of litigation which track to follow. Hearing on S.F. No. 578 Before the S. Comm. on Judiciary (Feb. 24, 2015) (statement of Chris Hunt). The chair also explained that: “Minnesota has based its jurisdiction on in rem proceedings. That means that the trust property is the source of jurisdiction.” Hearing on H.F. No. 383 Before H. Civ. L. & Data Prac. Comm. (Feb. 3,

2015) (statement of Chris Hunt). This statement suggests that the bill’s authors recognized that in rem jurisdiction is about the trust itself, not the power to remove the trustee.⁶

We also note that the Second Restatement of Trusts recognizes the dichotomy, stating that a proceeding in rem affects interests in the trust property while a proceeding in personam can subject the trustee to personal liability, enjoin them from committing a breach of trust, compel them to make specific reparation for a breach of trust, or remove them. Restatement (Second) of Trusts § 199(f) (1959). Accordingly, parties that elect to follow the in personam path can receive an order from the district court that binds parties properly served.

In sum, Minnesota Statutes section 501C.0204 dictates that a district court cannot remove a trustee when the district court is acting in rem. Rather, the district court must have in personam jurisdiction to remove a trustee.

II. Because the district court lacked in personam jurisdiction, it did not have the power to issue a binding order removing Wolf as trustee.

Swanson never properly invoked in personam jurisdiction in her petition to remove Wolf as trustee. Swanson filed three petitions in this matter: a petition to remove Wolf as trustee, a first amended petition one day later, and a second amended petition more than two months later, after Wolf had filed her motion to dismiss for lack of personal

⁶ Further, the house research summary of the bill indicated that the new law: “allows parties to elect to have in personam jurisdiction, which has a binding effect on the parties notified and other parties as indicated in this section.” Minn. House Rsch. Dep’t, Bill Summary of H.F. 383 (Jan. 30, 2015). This research summary also supports the concept that in personam jurisdiction was created in Minnesota to allow a court order removing a trustee to bind parties notified about the lawsuit.

jurisdiction. None of these petitions properly requests the district court's exercise of in personam jurisdiction over Wolf.

The original and first amended petitions did not state whether they invoked in rem or in personam jurisdiction, so in rem jurisdiction applied. Minn. Stat. § 501C.0201(c)(1). The first petition was served correctly under Minnesota Statutes section 501C.0203, subdivision 1, which governs service required to invoke in rem jurisdiction, because notice was published at least 20 days before the hearing in a legal newspaper in Faribault County and Swanson mailed a copy of the order for hearing to Wolf, the current trustee.

The second amended petition, which invoked in personam jurisdiction, was improperly served. Recall that service of a petition asking a district court to act in personam requires service of the order for hearing and petition on, among others, the current trustees. Minn. Stat. § 501C.0203, subd. 2. Swanson never served an order for hearing on Wolf, though she did serve the petition.⁷ Because Swanson did not properly invoke in personam jurisdiction, the district court only had in rem jurisdiction over Swanson's three petitions.

Still, Swanson argues that even without in personam jurisdiction, in rem jurisdiction is sufficient to give the court the power to remove Wolf as trustee here. She points to Minnesota Statutes section 501C.0206(a) (2022), which states that “[b]y accepting the

⁷ Swanson did not request an order for hearing on her second amended petition, and the district court did not issue one. Nor did it rely on Swanson's second amended petition in its order denying Swanson's motion to dismiss. Nevertheless, Swanson did not properly serve Wolf with the second amended petition, so in personam jurisdiction was not properly invoked.

trusteeship of a trust having its principal place of administration in this state . . . *the trustee submits to the personal jurisdiction of the courts of this state regarding any matter involving the trust.*” (Emphasis added.) But even if a trustee accepts a trusteeship and submits to the personal jurisdiction of a court of the state where the trust is administered, a court can only issue an order binding that trustee if in personam jurisdiction was properly invoked. Minn. Stat. § 501C.0206(a). That did not occur in any of Swanson’s three petitions because Swanson did not satisfy *both* prerequisites to the establishment of personal jurisdiction. As stated previously, personal jurisdiction has two elements: (1) an adequate connection between the defendant and the state where the judicial proceedings are held, and (2) the plaintiff’s invocation of the personal jurisdiction of the district court by following the requirements of due process and the relevant Minnesota Rules of Civil Procedure. *Wick*, 670 N.W.2d at 603. Assuming section 501C.0206(a) means that Wolf satisfies the adequate connection element of personal jurisdiction, Swanson herself failed to satisfy the second element related to personal service. As a result, this statutory provision does not automatically give the district court personal jurisdiction over Wolf.

DECISION

Minnesota Statutes section 501C.0204 dictates that a district court cannot remove a trustee in an in rem proceeding. Rather, the district court must act in an in personam proceeding to remove a trustee. We reverse and remand.

Reversed and remanded.